

Department of Energy

§910.372

(b) When the contracting officer determines that it is not in the Government's interest to consent to the novation of a financial assistance agreement from the original recipient to a third party, the original recipient remains subject to the terms of the financial assistance agreement, and the Department may exercise all legally available remedies under 2 CFR 200.338 through 200.342, or that may be otherwise available, should the original recipient not perform.

(c) The contracting officer may require submission of any documentation in support of a request for novation, including but not limited to documents identified in 48 CFR Subpart 42.12. The contracting officer may use the format in 48 CFR 42.1204 as guidance for novation agreements identified in paragraph (a) of this section.

[80 FR 53239, Sept. 3, 2015]

§910.372 Special award conditions.

(a) In addition to the requirements of 2 CFR 200.205, the following actions may require the use of Specific Conditions as identified in 2 CFR 200.207:

- (1) Has not conformed to the terms and conditions of a previous award;
- (2) Has a change of control as defined in §910.368;
- (3) Fails to comply with real property and equipment requirements at §910.360; or
- (4) Is not otherwise responsible.

[80 FR 53239, Sept. 3, 2015]

APPENDIX A TO SUBPART D—PATENT AND DATA PROVISIONS

1. Patent Rights (Small Business Firms and Nonprofit Organizations)
2. Patent Rights (Large Business Firms)—No Waiver
3. Rights in Data—General
4. Rights in Data—Programs Covered Under Special Protected Data Statutes

1. Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization is defined in 2 CFR 200.70.

Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Public Law 85-536 (16 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3 through 121.8 and 13 CFR 121.3 through 121.12, respectively, will be used.

Subject invention means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of award performance.

(b) Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient

(1) The Recipient will disclose each subject invention to DOE within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so,